Leaving aside all the above considerations, the circular is clearly intended for books in book shops. It contains no direction as regards books in private homes.

In this case the authorized officer, *i.e.* the first defendant who seized the book could not have formed the opinion that the book contained prejudicial publication, because on his own evidence he did not read the book. The defence adduced no evidence that any authorized officer has read the book or has formed that opinion. Although A.S.P. Suleiman signed the circular he does not say that he has read the book. Then to all this, the defence adduced no evidence that a controller has approved the impounding of the book. I do not think I can regard the letter (P6) from the "Ketua Setiausaha, Kementerian Hal Ehwal Dalam Negeri" as an approval to impound by the Chief Controller or a Controller of Imported Publications as it is not shown that the officer who wrote the letter holds either office. Under P.U. 356 of 1968 the officer in the Ministry of Home Affairs who is appointed the Chief Controller is the Principal Assistant Secretary, (D) and the officer appointed a Controller is the Assistant Secretary (D1). The Ketua Setiausaha, Kementerian Hal Ehwal Dalam Negeri for whom the letter was written does not appear to have any power at all under the Act. Apart from all this, there is no provision in the Act, whereby a book may be "deemed prejudicial" as stated in the letter.

I find that the defendants have not shown any evidence that the book was impounded in accordance with the Act. In my judgment, therefore, the impounding was unlawful and the book should have been returned to the plaintiff.

It is in evidence that the book was burnt when the Special (Intelligence) Branch Office in Kuantan was gutted by fire in February, 1971. The plaintiff has indicated that he will be satisfied with the cost of the book as damages. I therefore make the order that the defendants pay the plaintiff the sum of $3.60. As to the costs, it is now being urged that the award should be on the higher scale having regard to principles involved in the case. But in the circumstances of this case and considering the amount of loss involved, I would order the defendants to pay costs on the lower scale.

Order: Application for declaration that seizure was wrongful dismissed.

Defendants to pay plaintiff $3.60.

Costs to plaintiff on lower scale.

Order accordingly.

Solicitors: *S. Sivasubramanian.*

GOVERNMENT OF MALAYSIA v. D.C.

[O.C.J. (Chang Min Tat J.) December 18, 1972]

[Ipoh — Civil Suit No. 95 of 1971]

Income Tax — Claim for tax — Certificate by Comptroller-General of amount of tax due — Income Tax Act, 1967, ss. 103, 106 and 142(1).

In this case the action was for the sum of over $7 million for income tax for the years 1961 and 1964-1969 and for tin profits and penalty. It was argued in this case for the defendant that the very substantial amount claimed was "*prima facie* and without further and better particulars, grossly inflated and ambiguously, arbitrarily and illegally arrived at against all the rules of probability, bad in law and bad in fact". The defendant applied for the statement of claim to be struck out or alternatively for further and better particulars.

Held: the effect of sections 103 and 108 of the Income Tax Act, 1967 is that once an assessment is made the tax payable under the assessment shall on the service of the notice of assessment on the person assessed be due and payable at the place specified in the notice, whether or not the person appeals against the assessment and such tax due and payable may be recovered by the Government by civil proceedings as a debt due to the Government. In the circumstances the application to strike out the statement of claim must be dismissed and the application for further and better particulars refused.

Cases referred to:-

(1) *C.* v. *Comptroller of Income Tax* [1967] 2 M.L.J. 137.

(2) *Comptroller of Income Tax, States of Malaya* v. *H.K.V.* [1968] 2 M.L.J. 260

(3) *AB.C.* v. *Comptroller of Income Tax, Singapore* [1959] M.L.J. 166.

(4) *Comptroller of Income Tax* v. *A. Co. Ltd.* [1966] 2 M.L.J. 282.

(5) *Comptroller of Income Tax* v. *R.S.T.* [1962] M.L.J. 217.

(6) *A.B.* v. *Comptroller of Income Tax* [1967] 1 M.L.J. 11.

(7) *D.F.C. of T. (W.A.)* v. *Australian Machinery and Investment Co. Ltd.* (1945) 8 A.T.D. 133.

CIVIL SUIT.

Tan Sri Khaw Khai Boh (*Joseph Lai* with him) for the applicant (defendant).

Zulkifli bin Mahmood (Senior Federal Counsel) for the respondent (plaintiffs).

Chang Min Tat J.: The action is for a combined sum of $7,245,901.38 for income tax for the years of additional assessment 1961, and 1964-1969 inclusive and for tin profits tax under section 91 Fourth Schedule of the Income Tax Ordinance No. 48 of 1947 and penalty for the years 1961, and 1964-5. The tin profits claimed came up to $377,039. The penalty by itself totalled $67,319.99, as appeared in the endorsement of the writ.

The notice of assessment for the additional year of assessment 1964 was dated 28 April 1971. All the other notices of assessment were dated 26 March 1971. They were duly served on the tax-payer.

The writ was sued out on 13 May 1971. Reliance was put by the Government of Malaysia on section 103(1) of the Income Tax Act 1967 whereby the tax became payable on the service of the notices of assessment, whether or not the tax-payer had appealed against the assessment, and on section 106 which provided that the tax due and payable might be recovered by civil proceedings as a debt due to the Government.

The tax-payer by his solicitors entered an appearance on 7 June 1971 and on 29 June 1971 took out a summons in chambers with a return date set on Monday 5 July 1971 for various orders, all designed to stop Government from signing final judgment. The main orders sought were for (a) an order striking out the statement of claim under the inherent jurisdiction of the "Supreme Court" on the grounds that the same was frivolous and vexatious and an abuse of the process of the court or (b) alternatively an order striking out the statement of claim under the provisions of O.25 r.4, Rules of the Supreme Court 1957 on the ground that it disclosed no reasonable cause of action and was frivolous and vexatious, or (c) again in the alternative, an order that the statement of claim be struck out under O.19 r.27 Rules of the Supreme Court on the grounds that it tended to prejudice, embarrass and delay the fair trial of the action.

The secondary reliefs sought in the event of my refusing to grant any of the three orders asked for, were for an order for further and better particulars, a further order for an extension of time up to 14 days from my decision for filing the defence an for costs.

In his affidavit in support, the tax-payer alleged further that the total amount of $7,245,901.38 claimed consisted of the following: —

(1)	Penalties imposed	$3,345,220.94
(2)	Tin profits tax imposed	374,986.40
(3)	Tax estimated arising from the amount of additional chargeable income totalling $7,295,145.00	$3,525,676.14
		$7,245,883.48

Apart from repeating charges of frivolity, embarrassment and vexation, the affidavit would appear to state that the additional chargeable income of $7,295,145 was income which was submitted as "income arising from and relating to secondary wives, limited companies, partnerships, etc.", and which in the contention of the tax-payer was not his or chargeable to him. The affidavit did not perhaps as clearly state why the tin profits tax was not chargeable to the tax-payer, but it must presumably be on the same grounds, that it was the liability of the limited companies and not his alone. The tax-payer contended that in charging him to income tax in respect of such income and profits, Government was acting ambiguously, arbitrarily and unlawfully. He further contended that there were no proper grounds within the ambit of section 91(1) of the Income Tax Ordinance 1947 and section 113(2) of the Income Tax Act 1967 for the imposition, in the particular circumstances of the taxation in this case, of the penalty that had been imposed.

When the summons-in-chambers came up for hearing, Government tendered a certificate under the hand of an Assistant Comptroller of Inland Revenue under the provisions of section 142(1) of the Income Tax Act of 1967 to the effect that the sum claimed in the writ was due from the tax-payer.

It would perhaps be convenient if the said section 142(1) is set out at this stage:

142. (1) In a suit under section 106 the production of a certificate signed by the Comptroller-General giving the name and address of the defendant and the amount of tax due from him shall be sufficient evidence of the amount so due and sufficient authority for the court to give judgment for that amount.

A proper reading of this section must reasonably mean that immediately upon the issuance of the certificate, the amount of tax due could not longer be questioned.

Nevertheless, it is contended with great force and persistence that the whole claim is against the spirit of the law and the practice of the rule of law.

In the first place it is sought to establish that an application to strike out under the inherent jurisdiction of the court could be combined with a similar application under the Rules of the Supreme Court. The only difference would be that under the inherent jurisdiction of the court, evidence by affidavit was receivable whereas under O.25 r.4, the nature of the action or the defect in pleading must appear by the pleadings or particulars.

It is not really necessary for me to go through the several cases and authorities cited, and I propose to accept this submission without further question.

Next it is contended that under its inherent jurisdiction or under O.25 r.3 or r.4 Rules of the Supreme Court the court not only has jurisdiction to strike out pleadings which are vexatious and frivolous and in any case, an abuse of the process of the court but it also has a duty, it is said, to protect itself from abuse. Under O.19 r.27, the court or a judge has powers to strike out a pleading that is "unnecessary or scandalous" or which tends to prejudice, embarrass or delay the fair trial of the action.

Again a wealth of authorities is cited. I had of course listened with great interest when these cases were read and I accept their application and so I hope to be excused if I do not refer to them.

I come now to the substantive grounds of objections. It is contended that the very substantial amount claimed of $7,245, 901.38 was, *prima facie* and "without further and better particulars, grossly inflated and ambiguously, arbitrarily and illegally arrived at against all rules of probability, bad in law and bad in fact."

This is apparently founded upon the extensiveness and diversity of the tax-payer's business undertakings consisting of 7 tin mines with numerous shareholders and still more sub-shareholders and sub-sub-shareholders. The existence of sub-shareholders and sub-sub-shareholders is said to be a prevailing custom and tradition in tin-mining operations among the Chinese community since the turn of the century and it is also said that Taxing Code 208 which attributed all the income to the tax-payer instead of apportioning the same amongst the numerous shareholders, especially the sub-shareholders and the sub-sub-shareholders was in disregard of this tradition.

Further the powers given to the Comptroller-General of Inland Revenue to recover the tax levied in an action by the Government almost immediately after service of the notice of assessments and without leave to question the amount due are complained of.

The facts pertaining to the chronology of the assessment, apart from the issue of the notices and the issue of the writs are referred to in a statement from the Bar. The notice of additional assessment for the relevant years except 1964 were all dated 26 March 1971 and served on the tax-payer on the same day. The notice for 1964 was dated 28 April 1971 and served the next day on 29 April 1971. On 23 April 1971, by his tax accountants, the tax-payer lodged the relevant notices of objections and appeal. On 17 May 1971, Government took out the writ in this action. In other words, and this is, in sum, the whole complaint, Government did not wait to hear the appeal or objection to the assessments before moving to recover the amounts assessed as a debt due to it.

There followed some correspondence between the tax-payer's solicitors and Government on the propriety of levying the additional assessments and the tax on the tin profits and of imposing the penalty. The objection to the penalty was based on the contention that at no time the tax-payer had committed any offence. Government was asked not to proceed with the action. Further grounds of appeal were lodged by the tax-payer's accountants. Nevertheless the writ was served on the tax-payers's solicitors. Hence the application now before me.

At this point out of deference to learned counsel for the tax-payer I would repeat the following passages on which he relied so greatly. Firstly, *per* Buttrose J. in *C.* v. *Comptroller of Income Tax*[1] at page 140 —

"The Comptroller has been entrusted by the Legislature with wide and far reaching powers, no doubt with very good reason, but it is of paramount importance that they should be exercised with circumstances and within the limits prescribed. If there had been an abuse of these powers, it is the duty of the Court to interfere and ensure a proper and strict compliance with the provisions of the Ordinance."

Secondly, the passage from *Maxwell* on Interpretation of Statutes (11th Edn.) at page 278 —

"'In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.' A construction, for example, which would have the effect of making a person liable to pay the same tax twice in respect of the same subject-matter would not be adopted unless the words were very clear and precise to that effect. In a case of reasonable doubt the construction most beneficial to the subject is to be adopted. Still less is the language of a section to be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words."

and the passage from *Craies* on Statute Law (6th Edn.) at pages 112-3 —

"Express and unambiguous language appears to be absolutely indispensable in statues passed for the following purposes: Imposing a tax or charge; Conferring or taking away legal rights, whether public or private; Excepting from the operation of or altering clearly established principles of law; Altering the jurisdiction of courts of law. ... If a statute professes to impose a charge, 'the rule,' said the Judicial Committee in *Oriental Bank* v. *Wright*, is 'that the intention to impose a charge upon a subject must be shown by clear and unambiguous language.' In *Dock Co. at Kingston-upon-Hull* v. *Browne*, Lord Tenterden C.J. said: 'These rates are a tax on the subject and it is a sound general rule that a tax shall not be considered to be imposed (or at least not for the benefit of a subject) without a plain declaration of the legislature to impose it.' This accounts with the view expressed by Parke B. in *Re Micklethwait*: 'It is a well-established rule that subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words.' In *Partington* v. *Att.-Gen.*, Lord Cairns said: 'I am not at all sure that, in a case of this kind — a fiscal case — form is not amply sufficient; because, as I understand the principle of all fiscal legislation, it is this: if the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you simply adhere to the words of the statute."

both passages being quoted and relied on by Ong Hock Sim J. (as he then was) in his judgment in *Comptroller of Income Tax, States of Malaya* v. *H. K.V.*[2] at page 261.

Specifically, it is submitted to me that in respect of the additional assessments, it was wrong to ascribe the income and capital accretions of shareholders, including sub-shareholders and sub-sub-shareholders to the tax-payer. These shareholders appear to belong to 2 classes, one his secondary wives and adult children, the other persons not so related, including persons of other races.

With respect to the Tin Profits Tax, it is contended that in imposing the tax on the tax-payer as the sole-proprietor of the mines concerned Revenue had erred in ignoring the fact that the said mines were partnership concerns.

As for the penalties, my attention is drawn to the fact that for the years of assessment 1961, 1964 and 1965, the penalty imposed was a 100% of the amount assessed, in the last year 1965 inclusive of the Tin Profits Tax. It is also said that for the years 1966-1969, the amounts of additional income tax claimed included the tax imposed and it was also at a 100%. The tax-payer is said also to be unable to understand under which of the several headings in section 91(1) of the 1947 Ordinance or sections 112(3) and/or 113(2) of the 1967 Act, he was penalised.

On these grounds, it is sought to strike out the claim but in the event of the court declining to do so, further and better particulars are sought to enable a proper defence to be formulated.

Learned counsel for the tax-payer urges strongly and with great persuasion that the resort to what is in effect a summary judgment in the proceedings under consideration is an abuse of the process of the court. It does not take much imagination particularly in the circumstances of this case to realise that the demand for and the execution of the legal process for the recovery of an amount in the region of $7 millions must be ruinous, particularly as, however rich an individual may be, he is more likely than not to have his wealth tied up in his commercial enterprises. Stress is also laid on the slow process of the review of the assessment by the Comptroller-General and of the appeal on facts and law by the Special Commissioners. It is said that after the notice of appeal is filed it takes at least a minimum of 10 months before the matter comes before the Special Commissioners.

However, learned counsel for the tax-payer is frank enough to concede on an analysis of the taxing statutes that the Comptroller-General has very wide powers, so much so that as he himself points out, Buttrose J. could say in *A.B.C.* v. *Comptroller of Income Tax, Singapore*[3] that —

"The Comptroller is in my view perfectly entitled under the Ordinance to say 'I determine your chargeable income at $X and assess your liability to tax at $Y' and nothing more."

Counsel also concedes that Government is statutorily empowered to proceed to action for recovery without having to wait for determination of the objections and the appeals.

These concessions seem to me to be the answer to the tax-payer's counsel's contention. As admitted, once an assessment is made, Revenue can invoke sections 103 and 106 of the 1967 Act, the effect of such sections being that the tax payable under the assessment shall on the service of the notice of assessment on the person assessed be due and payable at the place specified in the notice, whether or not that person appeals against the assessment and such tax due and payable may be recovered by the Government by civil proceedings as a debt due to Government. Under section 106(3), the court is debarred from entertaining any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed, under appeal or incorrectly increased under section 103(4) or (5). By section 106, the certificate of the Comptroller-General, including his deputy or assistant, is sufficient evidence of the amount of tax due and sufficient authority for the court to give judgment for that amount and for execution to be levied.

If that is the law and if it is the duty of the courts established in the land to carry out and give effect to the law enacted by Parliament, then that is the end of the matter.

In reply, learned Federal Counsel stresses that the law as passed by Parliament has taken away from the High Court its function as a trier of facts in tax-cases and has put such cases before the Board of Review and thence before the Special Commissioners. As has been said by Choor Singh J. in *Comptroller of Income Tax* v. *A. Co. Ltd.*[4] at page 284.

"In my opinion, once the Comptroller of Income Tax has made an assessment and issued a notice of assessment to a tax payer calling upon him to pay the tax mentioned in the notice, the tax payer is bound by law to pay such tax within one month even though he may be dissatisfied with the assessment. Whether the assessment is right or wrong, the tax must be paid notwithstanding any objection or appeal. The scheme of the Income Tax Ordinance is that if any person disputes the assessment, he may apply to the comptroller to review and revise the assessment made upon him. If the comptroller refuses to amend the assessment, the aggrieved tax payer may appeal to the Board of Review... and the board may, after hearing the appeal, confirm, reduce, increase or annul the assessment or make such order thereton as to it may seem fit."

Tan Ah Tah J. has much the same thing to say in *Comptroller of Income Tax* v. *R.S.T.*:[5]

"It was contended by counsel for the defendant that certain triable issues had been raised and that therefore the defendant should be given leave to defend this action. One or these issues was said to be whether or not the sum on which tax is now claimed represent chargeable income which is taxable or capital assets not subject to taxation. On this point it is sufficient to say that it is eminently a matter for the determination of the Board of Review which was constituted under the Income Tax Ordinance to determine, *inter alia*, questions of that very nature."

The net effect of the legislation must then be in the words of Choor Singh J. in his judgment quoted above —

"When the Comptroller of Income Tax sues a tax payer to recover tax due under a notice of assessment, the tax payer cannot be heard to say that the assessment on which tax has been levied was not made in accordance with the provisions of the ordinance. Such a complaint must in the first instance be laid before the Board of Review. The provisions of Order XIV of the Rules of the Supreme Court must be read together with the provisions of the Income Tax Ordinance. If this is not done every unwilling tax payer will refuse to pay tax and when sued in Court will challenge the merits of the assessment thus causing considerable delay in the collection of the tax. The proper course for every aggrieved tax payer is to pay his tax and present his arguments against the assessment made upon him before the Board of Review."

I am aware that the present summons is not an Order 14 application but Federal Counsel contends that the same reasoning applies, and he reminds me of what H. T. Ong F.J. (as he then was) says in his judgment in *A.B.* v. *Comptroller of Income Tax*[6] at page 12 —

"All I need say is that, regrettable as it may be from the point of view of the taxpayer, the function of the court is to enforce the laws enacted by Parliament and any personal views as to whether or not the relevant provisions of section 82 are oppressive are irrelevant to the determination of this question."

Mindful of these judicial pronouncements which weigh heavily on my mind, I turn to the dictum of Buttrose J. in *C's* case, *supra*. I find that the case involved the attempted holding over of an overpayment of tax, as determined by the Board of Review, pending Revenue's appeal to the High Court, which put the tax-payer to the process of applying for an order of mandamus. The Federal Court of Singapore allowed the appeal of the tax-payer holding that the Comptroller had no legal right or authority to require an undertaking by the tax-payer's solicitors to retain the refund in their client's account until the outcome of his appeal. It ruled that mandamus would lie against the Comptroller where he was under a statutory obligation to perform a duty towards the tax-payer and it had such a duty to refund, once a court of competent jurisdiction had declared that there was an overpayment.

After due consideration, I find that the case of *C.* v. *Comptroller of Income Tax, supra*, is not relevant and that the *dictum* is not applicable to a case where Revenue is not proceeding in defiance or breach of any statutory provisions.

But my attention was drawn in another case to an Australian decision that would appear to decide that the High Court has certain powers of supervision and I readily admit that it is this case that had caused so much concern. It was the case of *D.F.C. of T. (W.A.)* v. *Australian Machinery and Investment Co. Ltd*[7] where the court held it had powers to grant a stay of proceedings if it saw fit. Lathan C.J. said —

"My brothers Rich, Dixon and Williams and myself are of opinion that the contention that there is no jurisdiction to grant a stay in these proceedings by reason of the provisions of the Income Tax Assessment Act section 201 and the associated sections should not be accepted. We are of opinion that there is jurisdiction to grant a stay of proceedings but that in considering any application for a stay the policy of the Act as stated in section 201 is a matter to which great weight should be attached."

Now the Australian Tax and Social Services Contribution Assessment Act 1936-1963 contains in section 201 provisions almost identical with section 82 of the 1947 Ordinance or section 103(1) of the 1967 Act, and for a time, I considered that the present case might well be a case in which there would be justification in acceding to the application.

I have unfortunately not been able to secure the full judgment of the case but after some cogitation, I have come to the view that however persuasive and even attractice it may be, the dictum cannot justify me in disregarding the judicial pronouncement made in the courts of this country and of Singapore which have been referred to earlier on. This is especially so because I cannot honestly find any justification to differ. The language of the statutes is clear and unambiguous and effect must be given to it. The circumstances may well be particularly difficult for the tax-payer but then hard cases never make good law.

For these reasons, the application to strike out the statement of claim is dismissed and for the same reasons, the application for further and better particulars is refused. For whatever good it will serve, the defendant will have 14 days within which to deliver his defence, but this should not preclude the Government from proceeding under O.14 Rules of the Supreme Court on the application of section 142(1) of the Income Tax Act 1967. The defendant must pay for the costs of the application.

Application refused.

Solicitors: *Allen & Gledhill.*

COMPTROLLER-GENERAL OF INLAND REVENUE v. N.P.

[O.C.J. (Chang Min Tat J.) December 18, 1972]

[Ipoh — Civil Action No. K 111 of 1970]

Income Tax — Tax to be paid notwithstanding appeal — Certificate of Comptroller as to amount of tax — Federal Constitution, Art. 13(1) — Income Tax Ordinance, 1947, ss. 82 & 86(3).

In this case it was argued (a) that the provisions of section 82 of the Income Tax Ordinance, 1947 (which requires tax to be paid notwithstanding an appeal) are void as being inconsistent with article 13(1) of the Federal Constitution (which provides that no person shall be deprived of property save in accordance with law); (b) that section 86(3) of the Ordinance, (which makes the certificate of the Comptroller as to the amount of tax due by a defendant "sufficient evidence" of the amount so due) should not be applied where an objection or appeal has been lodged.

Held: (1) the legislation in this case was duly passed by Parliament and is therefore in accordance with law;

(2) the proceedings being essentially a matter of giving effect to the statutory provisions of the law, do not, in law call into question the effect of any provision of the Constitution and therefore in accordance with section 86(3) of the Income Tax Ordinance judgment must be given for the Comptroller.

Cases referred to:-

(1) *State of West Bengal* v. *Subodh Gopal* [1954] S.C.A. 65 at page 117.

(2) *Tinsa Mau Naing* v. *Commissioner of Police, Rangoon & Anor.* [1950] Burma Law Reports 17.

CIVIL ACTION.

Zulkifli bin Mahmood (Senior Federal Counsel) for the plaintiff.

M. Sivalingam for the defendant.

Chang Min Tat J.: This action was first instituted in the High Court at Ipoh and then transferred to the Sessions Court of the Special President. An application was made to the Special President under section 30 of the Courts of Judicature Act 1964 for transmission of the proceedings to the High Court on the grounds that a question had arisen as to the effect of a provision of the Constitution. It now comes before me for my consideration.

Now in this action, the Comptroller-General of Inland Revenue Malaysia claimed from the respondent tax-payer the sum of $5,901.33¢, being —

(a) Amount of income tax due and payable for the year of assessment 1960 pursuant to the provisions of the Income Tax Ordinance 1947	$18,676.75
(b) Amount of penalty added pursuant to section 84(1) Income Tax Ordinance 1947	401.33
	$19,078.08
less payment	$13,176.75
	$ 5,901.33

In his amended statement of defence, the tax-payer first denied liability for the sum claimed.

This defence, though not strictly germane to my decision, should I think be considered as it must have some bearing on the question I have to answer. On consideration, it can be seen to be easily disposed of by recourse to arithmetic. The original assessment was for $18,676.75. Tax paid by the defendant came to $7,500 and on the agreement of the plaintiff to stand over $7,000 of the claim, upon receipt of an objection by the defendant, the latter paid four other sums at various dates. They totalled $4,176.75¢. In other words he had by his last payment paid $11,676.75¢ It was not correct for him to say that his tax liability was settled at this figure. There was that sum of $7,000 which had been stood over. In respect of this sum, the defendant paid $1,500, leaving a balance of $5,500. It is this sum of $5,500 which constituted the balance of the defendant's liability for tax for the year of assessment 1960 and which added to the $401.33 imposed as penalty made up the sum of $5,901.33¢ claimed in this action.

The defendant however stated in his defence that he did not understand why the sum of $401.33¢ was added as a penalty. As to this, there is an exhibit annexed to an affidavit in support of a summons under 0.14 Rules of the Supreme Court to sign final judgment. The exhibit was a copy of an Income Tax demand note which had been served on him and which showed the imposition of the statutory 5% under section 84(1) of the Income Tax Ordinance for non-payment of the tax balance of $8,026.75¢, after payment of $10,650 had